

(Stipulating Parties Listed on Signature Pages)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Case No. 07-5944 SC
MDL No. 1917

This Document Relates to:

Dell Inc., et al. v. Hitachi, Ltd., et al., Case
No. 13-cv-02171-SC

*Sharp Electronics Corp., et al. v. Hitachi
Ltd., et al.*, Case No. 13-cv-1173-SC

*Sharp Electronics Corp., et al. v.
Koninklijke Philips Electronics N.V., et al.*,
Case No. 13-cv-2776-SC

*Tech Data Corporation, et al. v. Hitachi,
Ltd., et al.*, Case No. 13-cv-00157-SC

**STIPULATION AND [PROPOSED]
ORDER SETTING SCHEDULE FOR
DEFENDANTS TO ANSWER OR
OTHERWISE RESPOND TO THE
DELL AMENDED COMPLAINT,
SHARP COMPLAINT, AND TECH
DATA AMENDED COMPLAINT**

STIPULATION AND [PROPOSED] ORDER SETTING SCHEDULE FOR DEFENDANTS
TO ANSWER OR OTHERWISE RESPOND TO THE DELL AMENDED COMPLAINT,
SHARP COMPLAINT, AND TECH DATA AMENDED COMPLAINT

Case No. 07-5944 SC; MDL No. 1917

1 Pursuant to Civil Local Rules 6-2 and 7-12, the undersigned Defendants and Plaintiffs
2 Dell Inc. and Dell Products L.P. (“Dell”), Sharp Electronics Corporation and Sharp
3 Electronics Manufacturing Company of America, Inc. (“Sharp”), and Tech Data Corporation
4 and Tech Data Product Management, Inc. (“Tech Data”) (collectively, the “Stipulating
5 Plaintiffs”) have conferred by and through their counsel and, subject to the Court’s approval,
6 HEREBY STIPULATE AS FOLLOWS:

7 WHEREAS, there is pending in the United States District Court for the Northern
8 District of California a multidistrict consolidated proceeding comprised of actions brought on
9 behalf of purported purchasers of cathode ray tubes (“CRT”) and CRT products, captioned as
10 *In re: Cathode Ray Tube (CRT) Antitrust Litigation*, Case No. 3:07-cv-05944 SC (MDL No.
11 1917) (the “MDL Proceedings”);

12 WHEREAS, on August 17, 2012, Defendants filed motions to dismiss and for
13 judgment on the pleadings with respect to certain Direct Action Plaintiff complaints (the
14 “Dispositive Motions”) (MDL Dkt. Nos. 1316, 1317, 1319);

15 WHEREAS, on December 11, 2012, Tech Data filed a Summons and Complaint in
16 the Middle District of Florida, *Tech Data Corporation, et al. v. Hitachi, Ltd. et al.*, Case No.
17 8:12-cv-02795-JSM-MAP (the “Tech Data Action”);

18 WHEREAS, on January 4, 2013, the United States Judicial Panel on Multidistrict
19 Litigation transferred the Tech Data Complaint to the United States District Court for the
20 Northern District of California for consolidated pretrial proceedings and assigned it to the
21 Honorable Samuel Conti (MDL Dkt. No. 1518);

22 WHEREAS, on February 13, 2013, Tech Data filed a Stipulation and Proposed Order
23 Regarding the Complaint in the Tech Data Action (MDL Dkt. No. 1568) requesting the Court
24 to enter an order authorizing the Defendants and Tech Data, once the Court has ruled on the
25 Dispositive Motions, to set a reasonable deadline for Defendants’ answers and/or a
26 reasonable briefing schedule for Defendants’ motions to dismiss Tech Data’s Complaint;

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1 WHEREAS, on February 14, 2013, Special Master Legge signed the Proposed Order
2 pursuant to the Stipulation Regarding the Complaint in the Tech Data Action (MDL Dkt.
3 1570);

4 WHEREAS, on September 9, 2013, Tech Data filed its First Amended Complaint
5 (MDL Dkt. No. 1911);

6 WHEREAS, on September 18, 2013, the Court entered an Order pursuant to the
7 Stipulation Regarding the Complaint in the Tech Data Action;

8 WHEREAS, on February 17, 2013, Dell filed a Summons and Complaint in the
9 Western District of Texas, *Dell Inc., et al., v. Philips Electronics North America Corp., et al.*,
10 Case No. 13-cv-00141 (the “Dell Action”);

11 WHEREAS, on March 15, 2013, Sharp filed a Summons and Complaint in the
12 Northern District of California, *Sharp Electronics Corp., et al. v. Hitachi, Ltd., et. al.*, Case
13 No. 13-cv-1173;

14 WHEREAS, on March 19, 2013, the Judicial Panel on Multidistrict Litigation issued
15 a conditional transfer order pursuant to 28 U.S.C. § 1407, transferring the Dell Action to the
16 Northern District of California to be consolidated with the MDL Proceedings (MDL Dkt. No.
17 1620);

18 WHEREAS, on March 26, 2013, this Court entered an Order finding that *Sharp*
19 *Electronics Corp., et al. v. Hitachi, Ltd., et al.* is related to the MDL Proceedings (MDL Dkt.
20 No. 1608);

21 WHEREAS, on April 23, 2013, Sharp filed a Stipulation and Proposed Order
22 Regarding the Complaint in the Sharp Action (MDL Dkt. 1649) requesting the Court to enter
23 an order authorizing the Defendants and Sharp, once the Court has ruled on the Dispositive
24 Motions, to set a reasonable deadline for Defendants’ answers and/or a reasonable briefing
25 schedule for Defendants’ motions to dismiss Sharp’s Complaint;

26 WHEREAS, on April 24, 2013, the Court entered an Order pursuant to the Stipulation
27 Regarding the Complaint in the Sharp Action (MDL Dkt. No. 1652);

28 WHEREAS, on May 13, 2013, the Dell Action was transferred to the MDL;

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1 WHEREAS, on May 28, 2013, Dell filed its First Amended Complaint (MDL Dkt.
2 No. 1726);

3 WHEREAS, on June 17, 2013, Dell filed a Stipulation and Proposed Order Regarding
4 the First Amended Complaint in the Dell Action (MDL Dkt. No. 1739) requesting the Court
5 to enter an order authorizing the Defendants and Dell, once the Court has ruled on the
6 Dispositive Motions, to set a reasonable deadline for Defendants' answers and/or a
7 reasonable briefing schedule for Defendants' motions to dismiss Dell's Complaint;

8 WHEREAS, on June 17, 2013, Sharp filed a Summons and Complaint in the
9 Northern District of California, *Sharp Electronics Corp., et al. v. Koninklijke Philips*
10 *Electronics N.V., et al.*, Case No. 13-cv-2776 (together collectively with Sharp's Complaint
11 dated March 15, 2013, the "Sharp Action");

12 WHEREAS, on June 21, 2013, this Court entered an Order finding that *Sharp*
13 *Electronics Corp., et al. v. Koninklijke Philips Electronics N.V., et al.* is related to the MDL
14 Proceedings (MDL Dkt. No. 1745);

15 WHEREAS, on June 28, 2013, Sharp filed a Stipulation and Proposed Order
16 Regarding the Complaint in the Sharp Action (MDL Dkt. 1748) requesting the Court to enter
17 an order authorizing the Defendants Koninklijke Philips Electronics N.V. and Philips
18 Electronics North America Corporation and Sharp, once the Court has ruled on the
19 Dispositive Motions, to set a reasonable deadline for defendants' answers and/or a reasonable
20 briefing schedule for defendants' motions to dismiss Sharp's Complaint;

21 WHEREAS, on July 3, 2013, the Court entered an Order pursuant to the Stipulation
22 Regarding the Complaint in the Sharp Action and Defendants Koninklijke Philips Electronics
23 N.V. and Philips Electronics North America Corporation (MDL Dkt. No. 1762);

24 WHEREAS, on July 3, 2013, the Court entered an Order pursuant to the Stipulation
25 Regarding the First Amended Complaint in the Dell Action (MDL Dkt. No. 1763);

26 WHEREAS, on August 21, 2013, the Court issued an Order Adopting in Part and
27 Modifying in Part Special Master's Report and Recommendation on Defendants' Motion to
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1 Dismiss the Direct Action Plaintiffs' Complaints ("August 21, 2013 Order") (MDL Dkt.
2 1856) in which the Court ruled on the Dispositive Motions;

3 WHEREAS, among other issues, the August 21, 2013 Order granted the Dispositive
4 Motions to the extent that they challenged certain Direct Action Plaintiffs' alleged right to
5 proceed under the "cost-plus" and "co-conspirator" exceptions to *Illinois Brick Co. v.*
6 *Illinois*, 431 U.S. 720 (1977) ("*Illinois Brick*"), and denied the Dispositive Motions to the
7 extent that they challenged certain Direct Action Plaintiffs' right to proceed under the
8 "ownership or control" exception to *Illinois Brick*; and

9 WHEREAS, the Defendants seek to dismiss the Stipulating Plaintiffs' Complaints
10 relying upon the same *Illinois Brick* arguments they used in the Dispositive Motions; and

11 WHEREAS, the Stipulating Plaintiffs and the Defendants seek to resolve the
12 Defendants' *Illinois Brick* arguments in a manner that conserves the resources of the Court
13 while at the same time preserving any and all appeal rights of both the Stipulating Plaintiffs
14 and the Defendants;

15 NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED between
16 counsel for the Stipulating Plaintiffs and counsel for the undersigned Defendants in the
17 above-captioned actions, as follows:

- 18 1. The Defendants' answers to (or motions to dismiss) the Stipulating Plaintiffs'
19 Complaints shall be due by October 7, 2013;
- 20 2. The Stipulating Plaintiffs' responses to any motions to dismiss shall be due by
21 November 6, 2013;
- 22 3. The Defendants' reply briefs shall be due by November 20, 2013;
- 23 4. The Stipulating Plaintiffs and Defendants agree that the issues addressed by
24 the Court's August 21, 2013 Order regarding the *Illinois Brick* exceptions
25 apply to the Stipulating Plaintiffs' actions;
- 26 5. The Stipulating Plaintiffs' Complaints do not seek to proceed under the "cost-
27 plus" and "co-conspirator" exceptions to *Illinois Brick*;
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- 1 6. The undersigned Defendants' request to dismiss the Stipulating Plaintiffs'
 2 Complaints as they pertain to the Stipulating Plaintiffs' right to proceed under
 3 the "ownership or control" exception to *Illinois Brick* is denied for the reasons
 4 set forth in the August 21, 2013 Order; and
- 5 7. By virtue of this Stipulation, the undersigned Defendants and the Stipulating
 6 Plaintiffs do not waive any of their appeal rights to the *Illinois Brick* issues
 7 addressed and resolved in this Stipulation.

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 9 Dated: October 1, 2013

Respectfully submitted,

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25 STIPULATION AND [PROPOSED] ORDER SETTING SCHEDULE FOR DEFENDANTS
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1 **ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**

2 I, Lucius B. Lau, attest that concurrence in the filing of this document has been
3 obtained from all signatories. I declare under penalty of perjury under the laws of the
4 United States of America that the foregoing is true and correct. Executed this 1st day of
5 October, 2013, at Washington, DC.

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8 By: /s/ *Lucius B. Lau*
9 Lucius B. Lau

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____

Hon. Samuel Conti
United States District Judge

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CERTIFICATE OF SERVICE

On October 1, 2013, I caused a copy of the “STIPULATION AND [PROPOSED] ORDER SETTING SCHEDULE FOR DEFENDANTS TO ANSWER OR OTHERWISE RESPOND TO THE DELL AMENDED COMPLAINT, SHARP COMPLAINT, AND TECH DATA AMENDED COMPLAINT” to be electronically filed via the Court’s Electronic Case Filing System, which constitutes service in this action pursuant to the Court’s order of September 29, 2008.

By: /s/ Lucius B. Lau
Lucius B. Lau (*pro hac vice*)

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